

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3265 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
DAKORE TEMPLE COMMITTEE

Versus

STATE OF GUJARAT  
-----

Appearance:

MR AK CLERK for Petitioner  
MR BY MANKAD, AGP for Respondent No. 1  
NOTICE SERVED for Respondent No. 2  
-----

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. This petition under Article 226 of Constitution of India is preferred by the petitioner Dakor Temple Committee for quashing and setting aside the order of

Deputy Secretary, Revenue Department dated 25.2.1991 quashing and setting aside the order dated 30.10.1981 passed by the Deputy Collector, Anand granting Exemption Certificate under sec.3(1)(ddd) of the Gujarat Agricultural Lands Ceiling Act, 1960 ( hereinafter referred to as the "Act" ) as prayed for by the petitioner vide application dated 26.6.1976, on the ground that the same is arbitrary, unreasonable, irrational and is based on some extraneous circumstances.

2. The main grievance of the petitioner is that respondent no.2 Deputy Secretary, Revenue Department, State of Gujarat, who has quashed and set aside the order dated 30.10.1981 passed by the Deputy Collector who is quasi-judicial authority under the provisions of the Act, had no authority or jurisdiction whatsoever to deal with judicial order passed by the competent authority under the provisions of the Act. Of course, respondent no.2 has remanded the matter to the same authority, but the grievance of the petitioner is that respondent no.2 cannot, under the law, appreciate the findings recorded by a judicial functionary appointed or authorised under a Statute. It is also submitted on behalf of the petitioner that it was open for the respondent State to prefer an appeal before the Gujarat Revenue Tribunal if respondent State has any grievance against the finding recorded by the Deputy Collector, Anand in favour of the petitioner.

3. Mr.A.K.Clerk, learned counsel appearing for the petitioner has taken me through entire set of facts and has submitted that the finding of the Deputy Collector recorded on 30.10.1981 was in accordance with law and as there was no chance of success had this matter been taken before the appropriate forum namely Gujarat Revenue Tribunal, the said order was taken into revision. That Respondent no.2 has passed the impugned order ignoring entire scheme of the Act and State has tried to nullify the legal effect of the order passed by the competent authority under the Statute. That petitioner could have appeared before the Deputy Collector, but since the act of interfering with the finding recorded by the judicial authority itself is illegal and unconstitutional, the petitioner is compelled to approach this Court by invoking jurisdiction vested under Article 226 of the Constitution of India.

4. I would like to refer facts in brief to appreciate the submissions advanced by Mr. Clerk, learned counsel appearing for the petitioner. It is the case of the petitioner that on or about 1905, two

philanthropists executed a Trust Deed in favour of the trustees of Dakor Temple in respect of lands known as Kazipura lands, admeasuring at the relevant time at about 1768 Bighas & Odd for utilising the same for feeding cows of the temple of Shri Ranchhodrai ji of Dakor at the discretion of the trustees. The temple committee was holding and enjoying lands of Kazipura which are now known as Thakorepura lands. Trust runs a gaushala since years. Petitioner Trust was holding these lands and was utilising the same as per the wish and will of the original donors as per the Trust Deed executed in favour of the petitioner Trust. It is submitted that Dakor Temple Scheme was framed by the Hon'ble Bombay High Court in First Appeal No. 47/1903 on or about 12.9.1906 which came to be varied and confirmed by the Privy Council in or about 1912. It is specifically contended by the petitioner temple committee that expenses in maintaining gaushala - cows is much more than the income earned from the lands in question. Lands in question are situated and bounded by villages Chandasar, Ulied, Amratpura and other villages. The Gujarat Agricultural Lands Ceiling Act, 1960 came to be amended in the year 1972 by Amending Act of 1972. In the year 1972, Manager of Temple Committee submitted an application dated 20.1.1972 to the Collector, Kheda for exemption of the above lands under sec.3(1)(d) of the Act and after careful consideration of the facts available on record and produced before him, competent authority exempted the entire holding of Temple Committee and certificate of exemption of the lands mentioned in the application was also issued in favour of the petitioner Temple Committee, vide order dated 12/16.2.1972.

5. Learned counsel Mr. Clerk has submitted that in light of exemption certificate issued earlier, no fresh proceedings under the Act could have been instituted. After insertion of cl.(dd) & (ddd) in sec.3(1) by Gujarat Act No.2 of 1974 which came into force on 1.4.1976, the petitioner temple committee, in compliance of the scheme of Gujarat Agricultural Lands Ceiling ( Amendment ) Act, 1972, again on 26.6.1976, applied for exemption under sec.3(1)(ddd) of the Amended Act and on the strength thereof, Ceiling Case No.1/96 was registered and while dealing with the said case, Deputy Collector, vide order dated 30.10.1981, exempted holding of the petitioner by allowing the application submitted by the petitioner. Said order is at Annexure : B. I have gone through the entire order and reasoning adopted by the learned Deputy Collector. Of course, this court has not to consider legality or validity of the order passed by the Deputy Collector in view of the case pleaded by the petitioner

and reliefs prayed for in this petition. The petitioner has submitted that after the order came to be passed by the Deputy Collector, Anand - Competent Authority, the Collector, Kheda wrote letter to the State of Gujarat and sent a copy of the certificate of exemption issued under sec.3(1)(c) of the Amended Act. According to the petitioner, as there was no appeal or revision preferred against the order passed by the Deputy Collector at Annex.B, certificate of exemption issued by the competent authority had become final and it was binding to the Government of Gujarat. Surprisingly, appellant trust received a notice on or about 17th October 1983 i.e. after a lapse of practically about 2 years, from the Revenue Department disclosing intention of the Government to take the order of Deputy Collector into Revision. So, the petitioner resisted the action and notice to show cause issued by the Revenue Department and filed detailed replies on various dates mentioned in para-13 of the petition. It seems that four different replies were sent to the respondent Government. After lapse of several years and after receipt of last reply sent by the petitioner trust on 15.11.1990, Deputy Secretary, Revenue Department, vide his order dated 25.2.1991, quashed and set aside the order passed by the Deputy Collector exempting the lands and issuing exemption certificate and remanded the matter back to the same authority, which is at Annex.I and is under challenge in this petition. The petitioner has taken various contentions and learned counsel Mr. Clerk appearing for the petitioner has tried to convince this Court on the grounds mentioned in the petition that the action of the State Government taking the order passed by the Deputy Collector in revision, itself was an erroneous act and not in accordance with the scheme of the Act or the basic settled legal principles. The said action was without jurisdiction. When a Statute provides for appeal, there was no scope for the State Government to take the order passed by the competent judicial authority into revision with a view to disturb the findings recorded in a proceedings initiated under the Statute. Deputy Collector may be a subordinate officer to any higher revenue officer in the State, but when he is empowered by the Statute to act judicially and to conduct judicial or quasi-judicial proceedings, administratively superior revenue officer, unless statutorily empowered by the very Statute or any other relevant law, cannot and should not interfere with the findings recorded by such authority. To support his submissions, learned counsel Mr. Clerk has placed reliance on more than one decisions and has mainly pointed out a decision rendered by the Bombay High Court in the case of Purshottam Nathu Mali v/s State of Bombay,

in Civil Application No. 274/51 ( Coram : Chhagla, C.J.). The question before the Bombay High Court was whether the Government had any right by an executive fiat to set aside the decision of the Revenue Tribunal and to uphold the decision of the Mamlatdar ? In the case before the Bombay High Court, State Government tried to disturb the finding recorded by the Revenue Tribunal which had reversed the finding recorded by the Mamlatdar while dealing with an appeal under a Statute. Bombay High Court has held that " it must be noted that the provincial Government is not constituted a higher judicial Tribunal over the Revenue Tribunal. Therefore, while the Government can control its Revenue Officers like Mamlatdars and Collectors, it has no power to control the decision of the Revenue Tribunal which is a judicial Tribunal set up under the Act. Therefore, what Government purported to do by its order of the 27th November, 1950 was in effect to set aside the order of the Revenue Tribunal passed on the 16th December, 1949." The Bombay High Court further held that "the order is clearly wrong and without jurisdiction." Ratio of the aforesaid decision squarely applies to the facts of the present case. It is not even the case of respondent no.2 or respondent State of Gujarat that it had power to reverse the order passed by the Deputy Collector irrespective of statutory remedy by way of appeal is provided under the Statute namely the Act. Even impugned order does not say about revocation or cancellation of exemption certificate issued by the Deputy Collector . When the certificate is issued on the strength of a valid order, the same cannot be turned down after a lapse of several years without following due process of law. Plain reading of the impugned order passed by respondent no.2 gives an impression that some extraneous considerations must have played an important role, otherwise no reasonable or prudent officer would try to disturb a finding recorded by the judicial authority appointed under a Statute. There is a reference of one letter in the preamble of the order under challenge at Sr.No.5. Plain reading thereof indicates that the opinion of one Revenue Officer from Land Reform Department was considered by Respondent no.2 behind the back. There is no discussion as to the contents of this letter in the impugned order.

6. During the course of submissions, certain queries were put by this Court to learned AGP Mr. Mankad. I am not convinced about the stand taken by the State Government because the petitioner trust was exempted earlier when Amending Act of 1972 was not in operation. Petitioner trust applied afresh in view of the amendment

in the Act. The scheme of the Act is self-explanatory. I would like to quote relevant sec.3(1)(ddd) of the Act so that case pleaded by the petitioner can be appreciated properly. It reads as under:-

"3(1) xxxx xxxx xxxx

(ddd) lands being utilised for maintenance of Panjarapole or gaushala which were exempt from the provisions of this Act immediately before the specified date by reason of their being the property of an institution for public religions worship registered as a public trust under the Bombay Public Trust Act, 1950 (Bom. XXXIX of 1950) provided such institution creates a separate trust in respect of such lands for the purposes of Panjarapole or Gaushala applied within a period of ninety days from the specified date, for the registration of such trust under the said Act, to the Deputy or Assistant Charity Commissioner having jurisdiction and endeavours to get such separate trust registered under the said Act within a period of one year from the specified date."

7. It is not a matter of dispute that the Temple Committee is running a Gaushala. As per the scheme of the Act, such Gaushala or Panjarapole can be exempted. The only condition is that holder should get itself registered for the very purpose under the provisions of the Bombay Public Trust Act. The important fact averred by the petitioner, is not assailed that the requirements under the Statute and especially under sec.3(1)(ddd) of the Amending Act of 1972 are fulfilled by the petitioner Trust. There was, therefore, no reason for the State Government to take the order passed by the Deputy Collector into revision. The first error committed resulted in to second error of remanding matter to the very authority. It is surprising that an administrative authority (head) has remanded the matter to the judicial authority. Deputy Collector dealing with land ceiling cases has a status of a Tribunal established under a Statute. Technically speaking, this action of the government can be said to be a direct interference with the functions of a judicial officer empowered under the Statute.

8. Even on merits, findings of the Deputy Collector are based on the interpretation of Clause 3(1)(dd) and

3(1)(ddd) of the Act. Respondent no.2 has said that both these provisions should be read simultaneously and the scheme under sec.3(1)(ddd) is subject to the compliance of the provisions made in sec.3(1)(dd). I have already referred the provisions of sec. 3(1)(ddd) of the Act in para-6 above. Plain reading thereof itself shows that this provision is an independent provision. It is not a matter of dispute that the petitioner temple committee had applied for registration of a separate trust known as Thakorpura Trust on 1.4.1977 and the said trust was also registered as a separate trust being Registration No.A/2326/Kheda on 30.4.1977. Clause (ddd) of sec.3(1) of the Amending Act deals with Panjarapole or Gaushala who utilises entire holding of the agriculturla lands for maintenance of such panjarapole or guashala which was exempted from the provisions of the Agricultural Lands Ceiling Act immediately before the specified date. The petitioner temple committee has rightly contended that it's case would fall under Clause (ddd) having exemption certificate issued by the competent authority. On the other hand, Clause (dd) applies to Panjarapole or Gaushala or to such institution which holds land for the purpose of grazing of cattle or storage of grass for cattle etc. on the specified date and intends to get exemption afresh in view of the scheme of the Act. Both these clauses are substitution of or say addition to the original scheme provided under Clause 3(1)(d) of the Act.

9. Thus, it is crystal clear that the State Government has committed grave and serious error in taking the aforesaid order in revision and action of the State Government is absolutely arbitrary, without jurisdiction, without authority of law and, therefore, unconstitutional and, therefore, requires to be quashed and set aside.

10. For the reasons stated above, petition is allowed. The impugned order dated 25.2.1991 passed by Deputy Secretary, Revenue Department, State of Gujarat at Annex.I is hereby quashed and set aside treating the same as non-est. Consequently, the order dated 30.10.1981 passed by the Deputy Collector, Anand is hereby restored and confirmed and, therefore, Exemption Certificate issued on the strength of the aforesaid order is also hereby declared to be legal and valid. Rule is made absolute. Interim relief, if any, is confirmed. This is a case wherein petitioner could have been awarded costs, but as the petitioner does not press for costs, no costs is awarded.